



July 13th, 2020

The Honorable Georgette Gomez  
President, San Diego City Council  
San Diego City Council  
202 "C" Street, 12<sup>th</sup> Floor  
San Diego, CA 92121

Dear Council President Gomez and Council Members:

The Associations signed below represent every open-shop construction apprenticeship program in San Diego County. Together we urge the City Council to reject the Building Trades Proposal, as drafted, that aims to exclude our apprentices from working on City of San Diego projects. The San Diego County construction industry is over 80% open shop. When Project Labor Agreements are mandated, efforts to hire locally are hurt when union workers from out of town displace San Diegans. Thousands of craft workers from our programs are San Diego residents, who pay taxes and should have the opportunity to build community infrastructure in their own neighborhoods.

While Councilwoman Montgomery raised several legitimate concerns during the June 10<sup>th</sup> Rules Committee meeting, none of those concerns are addressed in the ballot proposal before you. As drafted, this proposal would allow the City to:

**1. Exclude Apprentices from Open-Shop Programs**

While the language says all Federal and State approved programs are allowed, without a minimum "Core Worker" standard in the ordinance, mandatory apprenticeship ratios will make it impossible to dispatch open-shop apprentices to City Projects.

**2. Limit Core Workers to only Two (2)**

The language as drafted has no minimum on core employees other than saying that open shop contractors "may use core employees". Not only would this put open shop contractors at a significant disadvantage when it comes to project efficiencies, with only two core employees, there is no way open shop apprentices could be dispatched.

### **3. Force Workers Pay into Union Funds Without Receiving Benefit**

The “equal to or greater” language in the current draft is a common loophole used by the Building Trades Council to shut out open-shop benefit programs. The San Diego Unified School District uses this same language, and to this day not one non-union program has been allowed. The result is thousands of dollars spent into union trust funds that the workers lose at the end of the project, because they did not vest under the unions rules. To fix this flaw, the language should specify that workers benefits be paid into their previously established employer funds in accordance with state prevailing wage laws which would ensure workers existing benefits are maintained or they are compensated in their wages for any difference.

Amendments to this ballot language, attached to this letter, have been offered over the past few weeks without response. The National Building Trades Standard PLA does not allow for the inclusivity that these amendments would address, unless these parameters are added to the City ordinance. It is clear that the Building Trades Council is intent on a full repeal of Proposition A with no restrictions on how future PLAs could discriminate. The undersigned associations disagree with this approach and are united in opposition to Tuesday’s Council ballot proposal, as drafted, repealing Proposition A.

We also disagree with the justification for this \$750,000 ballot measure. The City has already approved three measures for the ballot and is already at its budgeted maximum. The City should not spend another \$750,000 on this measure. State funding has never been put at risk by Proposition A which has a carveout for state PLA mandates such as Assembly Bill 1290. The Building Trades Council is itself responsible for any confusion on this topic, as they sponsored the legislative efforts to threaten state funds. However, as city contracting is a “municipal affair” the California constitution and legal precedent makes clear that the State cannot interfere with City contracting rules, such as Proposition A, when no state money is involved. As we represent contractors, we are always very concerned about protecting state infrastructure funding – Proposition A has worked as designed to protect voters’ intent and safeguard state funding.

While updates to Proposition A and City Contracting Rules may be merited, this last-minute proposal by the Building Trades Council is based on a false premise, shuts out many stakeholders and comes at a great cost to taxpayers and voters, when the City has already maxed out on ballot measures for this year. We urge the City Council to reject this repeal proposal and bring all parties to the table in 2021 for a consensus solution that is inclusive.

Sincerely,

Abdur-Rahim Hameed, CEO  
**National Black Contractors’ Association**

Terry Seabury, CEO  
**Western Electrical Contractors Association**

Bonni Parsons, Executive Director  
**PHCC Association of San Diego**

Eddie Sprecco, CEO  
**Associated General Contractors of America, San Diego Chapter, Inc.**

Shandon Harbour, CEO  
**Associated Builders and Contractors San Diego Chapter**

John Upshaw, Executive Director  
**Independent Roofing Contractors of California**

**§22.4402 Should be amended to read as follows:**

The City may use, enter into, or require contractors to enter into, a *Project Labor Agreement* with a *Labor Organization* for a *Construction Project* that is in whole or in part funded by state discretionary funds.

**§22.4402 Section (c) should be amended to read as follows:**

The agreement allows craft apprenticeship programs that have been certified by the State of California or the United States Department of Labor to dispatch apprentices to work for the *Construction Project* in addition to and under the supervision ~~as~~ of core employees, at a ratio in compliance with state law.

**§22.4402 Section (d) should be amended to read as follows:**

A provision allowing contractors that do not have collective bargaining agreements with a Labor Organization may use a minimum of 10 core employees or 50% of the project workforce, whichever is greater.

**§22.4402 Section (e) should be amended to read as follows:**

A provision that allows contractors that do not have a collective bargaining agreement with a Labor Organization, independent of any included in project labor agreements, the option to pay the required training contributions for any worker who is not a member of a Labor Organization to any training program certified by the State of California or the United States Department of Labor.

**§22.4402 Section (f) should be amended to read as follows:**

~~A provision that allows contractors that do not have a collective bargaining agreement with a Labor Organization to be exempt from paying fringe benefits for non-union employees to a Labor Organization's trust fund provided that the non-union fringe benefit is equal to or greater than union fringe benefits.~~

To assure that workers are guaranteed the full compensation they earn on the project, any such PLA must allow any nonunion contractor that provides its employees with pension, health and welfare benefits to continue to provide those benefits, rather than contributing to the health and welfare funds designated in the PLA or the underlying collective bargaining agreements, provided that if the value of the nonunion contractor's benefits is less than the value of the benefits provided under the PLA, the contractor will pay the difference directly to its employees. Any determination of benefit value will be based solely on current dollar value of contributions set forth in the applicable wage determination for each craft.

**§22.4402 Section (m) should be added to read as follows:**

Per the National Building Trades standard "Model PLA" there will be no Union Security clause in the PLA; no workers will be required to join a union or pay union dues as a condition of working on the project, nor will they be required to pay any amount to any third party in lieu of some portion of union dues.